

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

LUIS MANUEL GONZÁLEZ-NIEVES,

Claimant,

v.

MICHAEL S. ASTRUE,

Respondent.

Civil No. 08-2015 (JAF)

**OPINION AND ORDER**

Claimant, Luis Manuel González-Nieves, pro se, petitions this court under 42 U.S.C. § 405(g) to review the decision of Respondent, Commissioner of Social Security Michael S. Astrue (“Commissioner”), denying Claimant’s application for disability benefits. (Docket No. 2.) Commissioner filed a memorandum defending his determination (Docket No. 15); Claimant never replied, despite our July 20, 2009, deadline to do so (see Docket No. 14).

**I.**

**Factual and Procedural History**

We derive the following facts from the parties’ filings (Docket Nos. 2; 11; 15) and the record in this case (“R.”) (Docket No. 10). Claimant was born on September 10, 1973. (R. at 65.) He completed the ninth grade. (R. at 30, 41.) He worked in construction for various employers and in various positions from 1993 to 2003. (R. at 41, 86.) He reports that his disabling condition began March 30, 2002. (R. at 65.) He also reports having worked for one

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1 month in 2003, helping to make sidewalks for Manatí Public Works, before he stopped due to  
2 his visual impairment.<sup>1</sup> (R. at 67, 86.) Claimant applied for Social Security benefits on April 26,  
3 2004. (R. at 16, 65.) His coverage for social security benefits expired on March 31, 2006. (R.  
4 at 75.)

5 On September 7, 2004, Commissioner determined that Claimant was not disabled and,  
6 accordingly, was not entitled to disability benefits under the Social Security Act. (R. at 52-54.)  
7 On October 6, 2004, Claimant requested reconsideration of the determination. (R. at 55.)  
8 Commissioner obliged and, on March 21, 2005, affirmed the earlier denial. (R. at 60-62.)

9 On April 7, 2005, Claimant requested an administrative hearing before an administrative  
10 law judge (“ALJ”) (R. at 63), which took place before ALJ Soloman Goldman on June 6, 2007  
11 (R. at 26). Claimant attended the hearing with counsel and testified regarding his alleged  
12 disability. (R. at 26-38.) A vocational expert, Luis Serrano Vega, also testified at Claimant’s  
13 hearing. (R. at 39-46.) He opined that Claimant is unable to perform his past work but that he  
14 can perform less physically-demanding jobs available in substantial numbers in various  
15 industries. (R. at 43.) When asked by Claimant’s counsel, Vega opined that if Claimant actually  
16 suffers from the level of physical impairment to which Claimant attests, Claimant “would have  
17 severe limitation to get involved in any work activity in a sustained manner.” (R. at 46.)

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<sup>1</sup> The ALJ, however, affirmatively found that Claimant did not engage in substantial gainful activity between the dates of March 30, 2002, and March 31, 2006. (R. at 18.)

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1 Also before the ALJ was the record showing Claimant's history of physical and mental  
2 impairment, namely a visual impairment, a fractured femur, lumbar pain, and depression.  
3 Claimant suffered trauma to his left eye at the age of nine; the cornea of his left eye remains  
4 opaque, resulting in poor vision in that eye. (R. at 32, 41, 169.) In 1998, Claimant suffered a  
5 fractured femur during a car accident, resulting in residual pain and a limp in his left leg. (R.  
6 at 32-33, 159, 165.) He also suffers from degenerative disc disease, resulting in radiating lumbar  
7 pain and nerve root compression. (R. at 160, 239.) Finally, Claimant receives treatment for  
8 depression. (R. at 269-303.)

9 According to the medical reports in the record regarding the relevant time period,  
10 Claimant received regular treatment at Morovis Medical Center, where he complained of back  
11 and leg pain and irritation in his eyes. (R. at 206-61 (reports dated December 2003 through  
12 March 2006).) Said reports include intake evaluations, radiology requests, specialist referral  
13 forms, and lists of Claimant's medications. (Id.) Reported there are Claimant's complaints of  
14 pain and other symptoms (id.), all of which are also documented elsewhere in the record.

15 Claimant also submitted two visual impairment reports from an examining ophthalmologist,  
16 Dr. José Colón-Vaquer, dated May 3 and December 15, 2004. (R. at 151-58.) Both record  
17 normal vision in the right eye but extremely impaired vision in the left. On August 4, 2004,  
18 Claimant was examined by an orthopedic surgeon, Dr. César Cintrón-Valle, whose final  
19 diagnosis showed lost vision in Claimant's left eye and a "completely consolidated" fracture in  
20 his left femur. (R. at 129-39.) On August 27, 2004, having reviewed Claimant's medical

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1 records, an internist, Dr. Rodríguez-de la Obra,<sup>2</sup> completed a physical residual functional  
2 capacity assessment, which found Claimant, inter alia, limited in his ability to lift, crouch, crawl,  
3 and climb and which recommended that Claimant avoid even moderate exposure to hazards, due  
4 to Claimant's fractured femur and visual impairment. (See R. at 141-48.)

5 On November 23, 2004, the Puerto Rico Family Department evaluated Claimant and  
6 diagnosed him with degenerative disc disease. (R. at 149-50.) On February 24, 2005, Claimant  
7 was examined by neurologist Dr. Zaida Boria and by radiologist Dr. Eduardo J. Medina-de la  
8 Baume. (R. at 159-68.) The results of those examinations reveal, inter alia, degenerative disc  
9 disease, impaired vision in the left eye but normal vision in the right, normal motor and sensory  
10 functions, normal reflexes, and a negative straight-leg raising test. (Id.) On February 28, 2005,  
11 Claimant was again evaluated by an ophthalmologist, Dr. Juan Nevarez, who reported normal  
12 function of the right eye but poor prognosis for the left and recommended that Claimant "avoid  
13 activities requiring excellent stereopsis bilateral vision and full visual fields." (R. at 169-71.)  
14 And on March 15, 2005, an internist, Dr. Magda I. Rodríguez-Colón, completed a second  
15 physical residual functional capacity assessment, which records Claimant's limitations as to,  
16 inter alia, lifting, climbing, stooping, crouching, and vision. (See R. at 172-80.)

17 Finally, Claimant submitted records of his treatment for depression, most of which  
18 postdate the expiration of his eligibility for social-security benefits. (See R. at 269-303.) On

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<sup>2</sup> Dr. Rodríguez-de la Obra's first name is illegible on the medical record. (See R. at 148.)

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1 those records within the relevant time period, Claimant was diagnosed as depressed but logical,  
2 coherent, and oriented; they contain no evidence of his mental impairment's effect on his  
3 relevant work functions. (See R. at 294-303.)

4 The ALJ issued his decision denying Claimant disability benefits on July 27, 2007. (R.  
5 at 10-23.) He found, inter alia, that Claimant has a severe impairment in that he suffers from a  
6 left femur fracture, left eye traumatic corneal opacification, left eye glaucoma, and lumbar pain;  
7 that Claimant does not have an impairment or combination of impairments that meets or  
8 medically equals a listed impairment, discussed below; that Claimant has the residual functional  
9 capacity ("RFC") to perform medium work, though with some additional limitations, discussed  
10 below; and, finally, that Claimant is not disabled, as defined by the Social Security Act. (R. at  
11 16-23.) In his written opinion, the ALJ surveyed Claimant's relevant medical history to assess  
12 and apply Claimant's RFC. (R. at 18-23).

13 On August 23, 2007, Claimant sought review of the ALJ's decision from the Appeals  
14 Council (R. at 9), which denied review on July 9, 2008 (R. at 5-8). On September 9, 2008,  
15 Claimant filed the present petition in this court seeking review of the ALJ's decision. (Docket  
16 No. 2.) Claimant never filed a memorandum of law, and Commissioner filed a memorandum of  
17 law on May 29, 2009 (Docket No. 15).

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## II.

### Standard of Review

An individual is disabled under the Social Security Act (“the Act”) if he is unable to do his prior work or, “considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. § 423(d). The Act provides that “[t]he findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive.” § 405(g). Substantial evidence exists “if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support [the] conclusion.” Irlanda-Ortíz v. Sec’y of Health & Human Servs., 955 F.2d 765, 769 (1st Cir. 1991) (internal quotation marks omitted) (quoting Rodríguez v. Sec’y of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981)).

We must uphold Commissioner’s decision if we determine that substantial evidence supports the ALJ’s findings, even if we would have reached a different conclusion had we reviewed the evidence de novo. Lizotte v. Sec’y of Health & Human Servs., 654 F.2d 127, 128 (1st Cir. 1981). In reviewing a denial of benefits, the ALJ must consider all evidence in the record. 20 C.F.R. § 404.1520(a)(3) (2009). Credibility and “[c]onflicts in the evidence are . . . for the [ALJ] - rather than the courts - to resolve.” Evangelista v. Sec’y of Health & Human Servs., 826 F.2d 136, 141 (1st Cir. 1987). We reverse the ALJ only if we find that he derived his decision “by ignoring evidence, misapplying the law, or judging matters entrusted to experts.” Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999).

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### III.

#### Analysis

Claimant does not detail the alleged shortcomings of Commissioner's decision but claims generally that "medically determinable physical impairments" entitle him to disability benefits under the Act. (Docket No. 2.) Because Claimant excludes from that general claim Commissioner's decision regarding Claimant's mental impairment (see id.), we need not review it.<sup>3</sup> In addition, without guidance from Claimant regarding the specific nature of Commissioner's error, we confine our review to the ALJ's determinations that were unfavorable to Claimant. Thus, we review the ALJ's finding that (1) Claimant's combination of impairments neither meets nor medically equals a listed impairment (R. at 19); and (2) Claimant, though unable to perform his past relevant work, has the RFC to hold jobs that exist in significant numbers in the national economy (R. at 19-23).

#### **A. Impairments Neither Meet Nor Equal a Listed Impairment**

Once the ALJ determined that Claimant's physical impairments are severe, he had to consider whether they, separately or combined, met or equaled a listed medical impairment, see 20 C.F.R. §§ 404.1520(c)-(d), .1525, .1526. The ALJ concluded that they did not. (R. at 19.)

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<sup>3</sup> To the extent that Claimant meant to plead error in Commissioner's mental-impairment determination, we are satisfied that substantial evidence supported the ALJ's decision. The few medical records on file regarding Claimant's mental health during the relevant time period show consistent adequacy regarding relevant mental functions (see R. at 294-303), and this supports the ALJ's ratings regarding Claimant's functional-capacity limitations—"mild" in three categories and "none" in the fourth and final (R. at 19). With those ratings, the ALJ could properly deem Claimant's mental impairment non-severe, see 20 C.F.R. § 404.1520a(d)(1), and deny his claim for disability benefits based on said impairment.

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1 We review the record medical evidence to determine whether substantial evidence supports the  
2 ALJ's conclusion.

3 We first compare Claimant's visual impairment to those listed in the Code of Federal  
4 Regulations ("Code"). See 20 C.F.R. pt. 404, subpt. P, app. 1, pt. A, 2.02 (loss of visual acuity);  
5 id. at 2.03 (contraction of the visual field in the better eye); id. at 2.04 (loss of visual efficiency).  
6 Each of the listed visual impairments contemplates an impairment of the better eye, to varying  
7 effect. Upon review of the record medical evidence regarding Claimant's visual impairment, we  
8 find that he suffers from no such impairment of his better eye. (See, e.g., R. at 151-58; 169-71.)  
9 There is scant evidence of abnormality in his better eye (see R. at 176 (noting decreased visual  
10 field in Claimant's right eye, given "widest diameter near 54 degree but with reduced upper  
11 field")) and nothing that amounts to any abnormality listed in the Code. Nor is there any  
12 evidence that Claimant's visual impairment medically equals the symptoms described in the  
13 relevant listings. See 20 C.F.R. § 404.1526(b)(1). We conclude that substantial evidence exists  
14 to support the ALJ's determination that Claimant's visual impairment neither meets nor equals  
15 a listed visual impairment.

16 We next consider Claimant's musculoskeletal impairments, those of his femur and spine.  
17 While the Code's relevant listed impairment includes a fractured femur, see 20 C.F.R. pt. 404,  
18 subpt. P, app. 1, pt. A, 1.06, a claimant's impairment will not meet said listing unless  
19 accompanied by an "[i]nability to ambulate effectively," id., which the Code defines generally  
20 as the inability to walk "without the use of a hand-held assistive device," id. at 1.00B2b.



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1        Though the record reveals that Claimant walked with a limp, favoring his left leg (see R. at 165),  
2        there is no evidence that he was unable to ambulate effectively, as defined in the Code. Nor is  
3        there any evidence that Claimant's fractured femur medically equals the symptoms described in  
4        the relevant listing. See 20 C.F.R. § 404.1526(b)(1). We, thus, conclude that substantial  
5        evidence supports the ALJ's determination that Claimant's fractured femur neither meets nor  
6        equals the listed impairment regarding fractured femurs.

7            As to Claimant's spinal impairment, we look to the Code's listing of spinal disorders, 20  
8        C.F.R. pt. 404, subpt. P, app. 1, pt. A, 1.04. Said listing requires that a claimant display an  
9        enumerated spinal disorder, one of which is degenerative disc disease, plus (1) evidence of nerve  
10       root compression accompanied by sensory or reflex loss and, if the lower back is involved, a  
11       positive straight-leg raising ("SLR") test, id. at 1.04A; (2) spinal arachnoiditis, id. at 1.04B; or  
12       (3) lumbar spinal stenosis resulting in the inability to ambulate effectively, id. at 1.04C. The  
13       record shows that Claimant suffers from degenerative disc disease but, as just discussed,  
14       contains no evidence that Claimant was unable to ambulate effectively, nor does it contain any  
15       evidence of spinal arachnoiditis. As to the only remaining listing, section 1.04A, we find that  
16       Claimant did adduce evidence of nerve root compression (R. at 239) but that the only SLR test  
17       in the record was negative (R. at 161). There is no evidence that Claimant's spinal impairment,  
18       nevertheless, medically equals the symptoms described in the relevant listings. See 20 C.F.R.  
19       § 404.1526(b)(1). Thus, we conclude that substantial evidence supports the ALJ's determination  
20       that Claimant's spinal impairment neither meets nor equals a listed spinal impairment.

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1           Having searched the listed impairments, and based on our review of the record, we also  
2           find that substantial evidence supports the ALJ's determination that no other listed impairment  
3           is closely analogous to any one or combination of Claimant's impairments. See  
4           § 404.1526(b)(2)-(3).

5           **B.   Residual Functional Capacity to Hold Other Employment**

6           To conclude, finally, that Claimant is not disabled, the ALJ first had to assess Claimant's  
7           RFC and then use that assessment to determine whether Claimant could perform his past relevant  
8           work or, if not, nevertheless adjust to other work. See 20 C.F.R. §§ 404.1520(e), .1545, .1560-  
9           .1569a. Section 404.1545 guides the ALJ's assessment of RFC, which is defined as "the most  
10          [one] can do despite [one's] limitations." § 404.1545(a)(1). The ALJ must use "all of the  
11          relevant medical and other evidence" to assess RFC. § 404.1545(a)(3). Section 404.1529 guides  
12          the ALJ's evaluation of symptoms and their effect on a claimant's capacity for work. See, e.g.,  
13          § 404.1529(c), (d)(4).

14          The ALJ found that Claimant has the RFC "to perform medium work except . . . is limited  
15          to climbing, stooping and crouching only occasionally" and must "avoid even moderate exposure  
16          to hazards and avoid work that requires perfect stereopsis [sic], binocular vision or perfect upper  
17          visual fields." (R. at 19.) In so finding, the ALJ considered Claimant's symptoms, noting that  
18          the "objective evidence of record establishe[s] the presence of medical impairments . . . but not  
19          to the extent claimed." (R. at 21.)

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1           Section 404.1567(c) defines “medium work” as the ability to “frequently” lift or carry  
2           objects weighing up to twenty-five pounds but to lift no more than fifty pounds. Dr. Boria  
3           reported that Claimant is unable to lift objects weighing thirty pounds or more (R. at 162), but  
4           Drs. Rodríguez-de la Obra and Rodríguez-Colón both concluded that Claimant can perform  
5           medium work, as defined under § 404.1567(c) (see R. at 142, 174). We find that substantial  
6           evidence supports the ALJ’s determination that Claimant can perform medium work. (See R.  
7           at 21 (noting Claimant’s response to prescribed treatment and his absence of persistent  
8           musculoskeletal pathology as corroboration for said determination).)

9           We also find that the other limiting factors the ALJ identified are supported by substantial  
10          evidence. (See, e.g., R. at 141-48, 173-80.) Claimant indicates no other limiting factors the ALJ  
11          overlooked (Docket No. 2), and our review of the record similarly reveals no further limiting  
12          factors. We thus find the ALJ’s finding as to Claimant’s RFC on the whole supported by  
13          substantial evidence.

14          Next, the ALJ must determine whether the claimant, given his particular RFC, can  
15          perform past relevant work. See §§ 404.1520(f), .1560(b). A vocational expert may be used to  
16          aid this determination. § 404.1560(b)(2). The ALJ found Claimant unable to perform his past  
17          relevant work, given Claimant’s RFC to perform “a narrow range of medium work.” (R. at 22.)  
18          Claimant does not dispute this finding (Docket No. 2), and we find it supported by substantial  
19          evidence (see, e.g., R. at 40-43).

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1 Finally, if the ALJ finds that the claimant's RFC precludes his return to past relevant  
2 work, the ALJ must then determine whether said RFC, nevertheless, permits other work that  
3 exists in substantial numbers in the national economy. See §§ 404.1520(g), .1545(a)(5)(ii); see  
4 also §§ 404.1560-.1569a (guidelines for assessing vocationally relevant factors such as age,  
5 education, work experience, and work availability); 20 C.F.R. pt. 404, subpt. P, app. 2 ("Medical  
6 Vocational Guidelines"); id. § 203.00 (framework for decisions involving a sustained work  
7 capability limited to medium work). With reference to both the framework provided by the  
8 Medical Vocational Guidelines and the vocational expert's testimony, the ALJ determined that  
9 Claimant is "capable of making a successful adjustment to other work that exist[s] in significant  
10 numbers in the national economy." (R. at 22-23.) Upon review of the record, we find that  
11 substantial evidence supports this determination (see, e.g., R. at 43) and, thus, uphold the ALJ's  
12 attendant conclusion that Claimant is not disabled.

### 13 III.

#### 14 Conclusion

15 In view of the foregoing, we hereby **AFFIRM** Commissioner's determination. We **DENY**  
16 Claimant's petition (Docket No. 2) and **DISMISS WITH PREJUDICE** all claims therein.

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 18<sup>th</sup> day of February, 2010.

19 s/José Antonio Fusté  
20 JOSE ANTONIO FUSTE  
21 Chief U.S. District Judge